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10/618,818	07/15/2003	Won-Gyu Kim	1599-0299PUS1	5903
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BIRCH STEWART KOLASCH & BIRCH				EXAMINER
PO BOX 747				VAKILI, ZOHEREH
FALLS CHURCH, VA 22040-0747			ART UNIT	PAPER NUMBER
			1614	
NOTIFICATION DATE	DELIVERY MODE			
02/19/2009	ELECTRONIC			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/618,818	<b>Applicant(s)</b> KIM, WON-GYU
	<b>Examiner</b> ZOHREH VAKILI	<b>Art Unit</b> 1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 October 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) 3,4,7,8 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,2,5 and 6 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/0256/06)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

**Claims 1-8 are presented for examination.**

A request for continued examination under 37 C.F.R. 1.114, including the fee set forth in 37 C.F.R. 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 C.F.R. 1.114, and the fee set forth in 37 C.F.R. 1.17(e) has been timely paid, the finality of the previous Office Action has been withdrawn pursuant to 37 C.F.R. 1.114. Applicant's submission filed October 2, 2008 has been received and entered into the present application. Claims 1, 2, 5, 6 are pending and are herein examined on the merits.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 5, and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"The primary purpose of this requirement of definiteness of claim language is to ensure that the scope of the claim is clear so the public is informed of the boundaries of what constitutes infringement of the patent. A secondary purpose is to provide a clear

measure of what applicants regard as the invention so that it can be determined whether the claimed invention meets all the criteria for patentability and whether the specification meets the criteria of 35 U.S.C. 1 12, first paragraph with respect to the claimed invention." (MPEP 2173).

The term "crushed, mass type" is vague and unclear, which renders the claims indefinite. The term is not defined by the claim, the specification does not provide a standard definition as what is meant by "crushed, mass type", and thus one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Because the term " crushed, mass type" does not provide a concise and clear definition as what the Applicant is trying to indicate the product of this crushed, mass type is, it is the Examiner's position that the public would not be informed of what is meant by crushed, mass type of what constitutes infringement of the present claims and thus the claims fail to meet either the tenor or express requirements of 35 U.S.C. 1 12, second paragraph and are properly rejected.

Claims 1, 2, 5, 6 are rejected under 35 U.S.C. 112, second paragraph, because the abbreviation given as "RH" in instant claim 1, item 6 is unclear, which renders the claims indefinite. The term is not defined by the claim, the specification does not provide a standard definition as what is meant by "RH", and thus one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claims 1, 2, 5, 6 are rejected under 35 U.S.C. 112, second paragraph, because in claim 1, lines 2-3, the selection of at least one vitamin appears to include the

selectable option of sucrose. The wording in these lines 2-3 is vague and indefinite as to whether sucrose is specifically required as a component of the claimed preparation or whether it is merely selectable or not.

Claims 1, 2, 5, 6 are rejected under 35 U.S.C. 112, second paragraph, because in claim 1, part 1), the claim is unclear as to whether the "dissolving, suspending, or emulsifying is required only of vitamin, or, whether the procedure is also optionally applied to sucrose, starch, and water.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigwald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation starch syrup, and the claim also recites maltose syrup which is the

narrower statement of the range/limitation. Limitations in parentheses are not acceptable.

***Claim Rejections - 35 USC § 103 (New Ground of Rejection)***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearce et al. (US Pub. No. 2003/0224090 A1), in view of Pearce (US Pub. No. 2005/0100648 A1), and further in view of Shaft et al. (US Patent No. 6395321 B1).

Pearce et al. teach of a gasified candy that is usually hard candy containing gas, such as carbon dioxide (page 5, paragraph 81). The gasified candy can be prepared from any available sugars such as glucose, fructose, sucrose, lactose, alone or in combination, may be employed. A mixture of sucrose with corn syrup (containing glucose, maltose, dextrin) may be used (page 6, paragraph 91). The release of pressure from the vessel fractures the gasified sugar into granulated pieces in a wide range of assorted sizes. Although finely divided pieces of gasified candy in a variety of sizes may be employed, the pieces may be sieved to provide uniform sized pieces (see page 6, paragraph 93). Another type of effervescence can be obtained by mixing

ingredients such as sodium bicarbonate in presence of water (see page 7, paragraph 102). Flavorings such as natural and artificial flavors may be used (see page 4, paragraph 63). Coloring may be also used (see page 9, paragraph 133). Pearce further teaches ingredients beside sweeteners and flavoring that are desirable to include in the composition such as vitamins (see paragraph 136).

Pearce (20005/0100648 A1) teaches of ingredients such as ascorbic acid (vitamin C) to be mixed into the composition (see paragraph 42).

Shaft et al. teach in the present invention packaging of food items such as, cheese blends; pizza toppings; peanut butter; jelly; cream cheese; cookie dough; and candies (see col. 11, lines 36-44) by hermetic package entirely enclosed by peelable hermetic seals (see col. 14, claim 25, lines 32-33).

Clearly, one having ordinary skill in the art would have been motivated to use the teaching of Pearce et al. for the preparation of a carbonated crushed, mass type vitamin. Pearce et al. disclose of a carbonated candy incorporated by vitamins, carbon dioxide for gas, sucrose, and lactose or glucose and further Pearce ('648) teaches the incorporation of vitamin C to be mixed into the composition. Shaft et al. teach the packaging and enclosure of the product such as candy in a hermetic package. As combined, the teachings of Pearce et al. for making a carbonated crushed, mass type vitamin and the packaging of the product taught by Shaft et al., result in the claimed invention.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the teachings of the above references and produce the carbonated candy-type vitamin in a hermetic package.

Thus the claimed invention was within the ordinary skill in the art to make and use at the time the claimed invention was made and as a whole, *prima facie* obvious.

***Response to Arguments***

Applicant argues that Pearce is directed to an orally soluble edible film and the orally soluble edible film contains carriers such as hydroxypropylmethyl cellulose, carboxymethyl cellulose, etc. Also Applicant argues that the final form of the candy-type vitamin is a crushed mass, and bears no resemblance to a film.

Examiner does not agree with Applicant's remarks regarding the composition containing carriers such as hydroxypropylmethyl cellulose, carboxymethyl cellulose, etc. Applicant does not show that these carriers would materially affect the nature of the claimed invention. The only difference between the prior art and the instant claims is that one product is a film and the other is a crushed, mass type. In the absence of a clear definition of bounds and metes of the phrase "crushed, mass type", edible film is considered a type of candy or is a candy-type. Also, the determination of the final product shape, or its consistency is considered to be within the skill of the art in the absence of evidence to the contrary. However, Applicant is attempting to demonstrate a patentable distinction over US Pub. No. 2004/0247744 A1 by indicating that it only

teaches an edible film that releases gas. However, US Pub. No. 2004/0247744 A1 teaches also a gasified candy that is usually hard candy containing gas, and upon the release of the pressure, the solid gasified candy fractures into granules of assorted sizes. Applicant's remarks related to the obviation of the rejection by such an amendment are not persuasive.

Further, Applicant argues that Shaft does not teach the hermetic package for a carbonated candy-type. It is not necessary for Shaft to teach the hermetic package for a carbonated candy-type. Shaft teaches hermetic packages for food and candies whether these candies are carbonated or not does not have a patentable weight. Applicant is reminded that is not an anticipation rejection this is an obviousness rejection. In obviousness rejection a combination of references is used, and the references are relied upon in combination and are not meant to be considered separately as in a vacuum. It is the combination of all of the cited and relied upon references that make up the state of the art with regard to the claimed invention. Applicant's claimed invention fails to patentably distinguish over the state of the art represented by the combination of the cited references. *In re Young*, 403 F.2d 754, 159 USPQ 725(CCPA 1968); *In re Keller* 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Moreover, it is noted that rejections under 35 U.S.C. 103(a) are based on combinations of references, where the secondary references are cited to reconcile the deficiencies of the primary reference with the knowledge generally available to one ordinary skill in the art to show that the differences between Applicant's invention and the prior art are such that they would have been modifications that were *prima facie*

obvious to the skilled artisan. It is noted that the claimed invention is not required to be expressly suggested in its entirety by any one or all of the references cited under 35 U.S.C. 103(a). Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Applicant's amendments and remarks have been carefully considered in their entirety, but fail to be persuasive in establishing error in the propriety of the present rejection.

***Conclusion***

No claims of the present application are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is (571)-272-3099. The examiner can normally be reached on Monday-Friday (8:30 AM-5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on (571)-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili  
Patent Examiner  
Art Unit 1614

December 10, 2008

/Ardin Marschel/

Supervisory Patent Examiner, Art Unit 1614